IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

WILLIAM THOMAS HALL	:	CIVIL ACTION
	:	
v.	:	
	:	
BUCKS COUNTY, PENNSYLVANIA	:	NO. 02-1446
and	:	
VIRGIL THOMPSON, M.D.	:	
c/o Bucks County Correctional Facility	:	

O'NEILL, J. JULY 23, 2002

MEMORANDUM

Plaintiff William Thomas Hall, a former inmate of Bucks County Correctional Facility, has brought this action under 42 U.S.C. § 1983 alleging violations of his civil rights under the Eighth Amendment to the United States Constitution. In addition, plaintiff also asserts related medical malpractice claims. Defendant Bucks County has moved to dismiss plaintiff's complaint pursuant to Fed. R. of Civ. P. 12(b)(6).

I. STANDARD OF REVIEW

In resolving a motion to dismiss all well-plead factual allegations are to be construed as true and all reasonable inferences are to be drawn in favor of the non-moving party. See H.J. Inc. v. Northwestern Bell Tel. Co., 492 U.S. 229, 249-50 (1989). The Federal Rules of Civil Procedure simply require a "'short and plain statement of the claim' that will give the defendant fair notice of what the plaintiff's claim is and the grounds upon which it rests." Conley v. Gibson, 355 U.S. 41, 47 (1957). In addition, a court should not dismiss a complaint "unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claims which

would entitle him to relief," Id. at 45-46.

II. BACKGROUND

Plaintiff injured his left elbow on March 27, 2000. His treatment included pinning the elbow and placing it in a half-cast with a splint. On April 1, 2000 plaintiff was apprehended by the Middletown Township police on shoplifting charges. He was admitted into the Bucks County Correctional Facility (hereinafter "B.C.C.F.") in Doylestown, Pennsylvania. While being processed for admission, plaintiff alleges the corrections officer pulled his elbow, "removed the rings from his sling causing immediate instability," and twisted his arm. Plaintiff maintains this resulted in the dislocation of his elbow. (Pl.'s Comp. ¶¶ 17, 18). On April 2, 2000 the B.C.C.F. sent a physician named Dr. Thompson to examine the plaintiff. Plaintiff alleges that Dr. Thompson did not conduct a proper examination despite the plaintiff's complaints of pain. (¶ 21). The following day plaintiff again sought medical attention. He was x-rayed at B.C.C.F., and the x-ray showed "posterior dislocation of the radius and ulna in relationship to the distral humerus." (¶ 24). Despite the results of the x-ray, plaintiff states that he was provided no medical assistance.

Plaintiff repeated his complaints of pain and was seen by Gene D. Levin, M.D. on April 17, 2000. Dr. Levin performed another x-ray and determined plaintiff had suffered a "posterior elbow dislocation." (¶ 29). Aside from Dr. Levin's diagnosis, plaintiff was provided with no medical attention. On May 3, 2000 plaintiff was seen by Matthew L. Ramsey, M.D. at the University of Pennsylvania. According to plaintiff, Dr. Ramsey suggested that the lack of treatment to plaintiff's elbow over the course of the month had subsequently resulted in permanent damage. (¶ 33). On June 15, 2000 the plaintiff was released from B.C.C.F. On

November 16, 2000 plaintiff underwent surgery which consisted of fusing his elbow into a bent position. (¶¶ 39, 40). As a result of the treatment furnished by the B.C.C.F. plaintiff alleges that he has suffered permanent damage to his left elbow which he states is now fused permanently in a bent position.

III. DISCUSSION

Plaintiff asserts claims against defendants for damages under 42 U.S.C. § 1983, alleging violations of the Eighth Amendment's prohibition on cruel and unusual punishment. Incarcerated prisoners are guaranteed access to reasonable medical care and may hold prison officials liable if the medical care is deficient.

> "Deliberate indifference to serious medical needs of prisoners constitutes the 'unnecessary and wanton infliction of pain,' *Gregg v. Georgia* at 173 (joint opinion), proscribed by the Eighth Amendment. This is true whether the indifference is manifested by prison doctors in their response to the prisoner's needs or by prison guards in intentionally denying or delaying access to medical care or intentionally interfering with treatment once prescribed," Estelle v. Gamble, 429 U.S. 104, 105 (1976).

Estelle established the standard for a cause of action as "acts or omissions sufficiently harmful to evidence deliberate indifference to medical needs," Id. at 106.

The deliberate indifference standard may be met in two ways. First, where there is an awareness of a need for medical attention accompanied by an intentional refusal to provide that care, see Monmouth County Correctional Institutional Inmates v. Lanzaro, 834 F.2d 326, 346 (3rd Cir. 1987), and also when a conscious disregard of a substantial risk of serious harm is evinced, see Farmer v. Brennan, 511 U.S. 825 (1994). Liability for prison officials requires more than mere "ordinary lack of due care for the prisoner's interests or safety," see Whitley v. Albers, 475 U.S. 312, 319 (1986). The test for misconduct is similar to a recklessness standard; the plaintiff

must demonstrate that the prison official acted or failed to act in spite of his or her knowledge of a substantial risk of serious harm to the plaintiff. Farmer at 842.

In order to hold a municipality liable, it is necessary to establish a policy or custom which engendered the specific harm to the plaintiff. See Monell v. New York Department of Social Services, 436 U.S. 658, 694 (1978). The existence of a policy may be proven in a number of ways: first, actions by a municipal legislative body may serve as evidence of an official policy, see Pembaur v. City of Cincinnati, 475 U.S. 469, 480 (1986); second, agencies exercising delegated authority may promulgate policy; third, individuals with decision-making authority may institute policy; and fourth, a systematic policy of inadequate training or supervision. See Reitz v. County of Bucks, 125 F.3d 139, 144 (3d Cir. 1997), citing Monell, 436 U.S. at 690-91 (1978).

Plaintiff alleges that Bucks County has a policy of inadequate training or supervision which resulted in harm to him during his admission and subsequent incarceration at the B.C.C.F. Defendant Bucks County cites the lack of "specific acts regarding training, condonation, custom, ordinance or policy" in its motion to dismiss (¶ 7) as a basis for dismissal. In Carter v. City of Philadelphia, 181 F.3d 339 (3d Cir. 1999), plaintiff brought a section 1983 claim alleging policy and inadequate training against the Philadelphia District Attorney's office and the Philadelphia police department. In the plaintiff's pleadings, he alleged the existence of policy without citing to any particular person of authority, precise custom, or problematic pattern of behavior. The Court of Appeals for the Third Circuit held, "The District Court's insistence that Carter must identify a particular policy and attribute it to a policymaker, at the pleading stage without benefit of discovery, is unduly harsh," Id. at 357-58. Plaintiff's complaint avers that Bucks County

Correctional Facility's policy and custom lead to the deliberate indifference to plaintiff's medical needs. Pursuant to Carter, plaintiff has adequately pled allegations of policy against defendant Bucks County.

These allegations are sufficient to withstand a motion to dismiss and comply with the standard set forth in Fed. R. of Civ. P. 8. Defendant's motion to dismiss will therefore be denied.

An appropriate Order follows.

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ORDER

AND NOW, this 23 day of July, 2002, in consideration of defendant's motion to dismiss, plaintiff's response thereto, it is ordered that: Defendant's motion to DISMISS is DENIED.

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THOMAS N. O'NEILL, JR., J.